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No. 93-1747

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1993

EIGHT UNKNOWN OFFICERS,
Petitioners,

vs.

MARILYN CENTANNI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER A POLICE OFFICER HAS QUALIFIED IMMUNITY TO SEIZE A PERSON WHO HAS LEFT THE RESIDENCE OF A SUSPECT TO A CRIME, TRANSPORT HER TO A POLICE STATION, READ AND OBTAIN A WAIVER OF HER *MIRANDA* RIGHTS, INTERROGATE HER, AND DETAIN HER FOR OVER FOUR HOURS WITHOUT PROBABLE CAUSE TO BELIEVE SHE HAS COMMITTED ANY CRIME?

IDENTIFICATION OF PARTIES

In addition to the Petitioners, Eight Unknown Police Officers, and Respondent Marilyn Centanni, the City of Mayfield Heights, Lieutenant Van Barto, Chief Dominic Caprara, Sergeant Alvin Schmitt, and Officers David Anderson and Robert Cunningham were all parties to the proceeding below (See Sup. Ct. R. 24.1(b)).[1]

[1] The City of Mayfield Heights, Chief Caprara, and the other Mayfield Heights police officers were named by Centanni in her Amended Complaint.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reprinted at pages A1-A10 of the Petition For a Writ of Certiorari ("Petition"), and is to be published as *Centanni v. Eight Unknown Officers,* 15 F.3d 387 (6th Cir. 1994). The opinion of the District Court For the Northern District of Ohio, Eastern Division, is reprinted at pages A11-A21 of the Petition.

STATEMENT OF JURISDICTION

This Court has discretionary jurisdiction in this case pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are adequately set out in the Petition, at page 2.

STATEMENT OF THE CASE

Marilyn Centanni ("Centanni") brought this action for damages pursuant to 42 U.S.C. §1983, challenging the unlawful stop, search, arrest, interrogation and detention of her by officers of the Mayfield Heights Police Department. On February 19, 1991, Centanni visited her boyfriend, Chris Lombardo, at his parents' (Nicholas and Maria Lombardo) Mayfield Heights home. Centanni left the Lombardo home at approximately 12:25 a.m., the morning of February 20th. She left having spent the evening without seeing or speaking to Nicholas Lombardo ("Lombardo").

Unbeknown to Centanni, the Mayfield Heights Police Department had staked out the Lombardo home after being notified by the City of Walton Hills Police Department that Nicholas Lombardo was a suspect in a shooting. Lombardo was identified by the victim as his assailant. There was no indication that Nicholas Lombardo had an accomplice to the shooting. Nicholas Lombardo arrived home at approximately 11:15 p.m. and engaged in an argument with his wife, which Centanni overheard.

Upon leaving the Lombardo home, Centanni began driving to her residence in her gold Pontiac Grand Am. The shooting suspect's vehicle had been identified as a blue van. After receiving orders from Lieutenant Barto to stop Centanni's car, Patrolman Cunningham (one of the officers assigned to the stakeout) stopped her vehicle by activating his vehicle's flashing lights.

Even though Centanni was not a suspect in the shooting in which Nicholas Lombardo was a suspect, and in fact was not suspected of any crime (even a traffic violation) she was ordered to relinquish her car keys and driver's license. Upon request, she consented to a search

of her purse, her person (a "patdown" search) and her vehicle. No incriminating evidence was found during these searches.

The officers then informed Centanni of the shooting incident. The officers told Centanni she would have to accompany them to the Mayfield Heights Police Station, despite the lack of evidence linking her to Lombardo's alleged crime. The officers made it clear that she was not free to leave, and she drove to the station in her vehicle, escorted in front and rear by two police cars.

At the station, Centanni was taken by two officers to an interview room in the jail area. Although she was not charged with any offense, she was given *Miranda* warnings, and signed a statement waiving those rights.

Centanni was interrogated by various officers for approximately 30 minutes about the physical layout of the Lombardo home, people present, the evening's events, the presence of firearms, and her speculation as to Nicholas Lombardo's mental state. She was later briefly interrogated by a Walton Hills officer concerning the same matters.

Despite the Mayfield Heights Police not suspecting Centanni of any crime (even after the interrogation), she was informed that she would be held in the station to insure that she did not make any phone calls. Based on the officers' mere speculation that Centanni would attempt to contact Nicholas Lombardo (or otherwise interfere with his arrest) Centanni, a single mother who resided with her parents, was held incommunicado at the station for over three hours. She was not free to leave until Nicholas Lombardo was arrested and she was told by the officers she could leave.

Given the "Hobson's choice" of awaiting her detention in a jail cell or the secured visitors part of the prisoner's visiting room, she chose the latter. She was detained in this room for approximately three hours.

At approximately 4:00 a.m., the Mayfield Heights SWAT Team arrested Lombardo at his home without incident. After an arrest warrant was issued for Nicholas Lombardo, the SWAT team was deployed around the Lombardo home. Lieutenant Barto telephoned Nicholas Lombardo, explained the situation to him, and asked that he walk out the front door and voluntarily surrender, which Lombardo did.

After the arrest, Centanni was released from the station at approximately 4:20 a.m.—almost four hours after her initial detention and transportation to the station. She was never charged with any crime in connection with this incident.

The District Court granted Centanni's Motion for Summary Judgment against the officers, and denied the officers' motion for summary judgment on their claim of qualified immunity. In the officers' appeal from the District Court's interlocutory order, the Sixth Circuit affirmed the District Court's ruling that Centanni was arrested without probable cause and upheld the denial of the officers' summary judgment motion (Petition, A10).[2]

Petitioners now seek further interlocutory review of the District Court's decision.

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[2] Both the District Court and the Sixth Circuit found that the officers' initial stop, detention, and search of Centanni's purse, person and vehicle was permissible under *Terry v. Ohio*, 392 U.S. 1 (1968) and *Michigan v. Long*, 463 U.S. 1032 (1983), but found the subsequent detention and removal to the police station impermissible (See, Petition, pages A15, A5, n.2).

SUMMARY OF ARGUMENT

The Supreme Court and United States Appellate Courts have long held that de facto arrests and detentions of individuals must be premised upon probable cause to comply with Fourth and Fourteenth Amendment guidelines. Stripped of repetitive arguments replete with *non sequitur* conclusions, the gist of Petitioners' claim is that this Court should grant the Petition to vitiate the probable cause standard which has always been held necessary to support a de facto arrest and detention. Since this Court has previously determined that probable cause is necessary to detain a *suspect* of a crime in these (and less intrusive) circumstances (*Dunaway v. New York*, 442 U.S. 200 (1979)), there is no reason why this Court should expend its limited time and resources to question whether the probable cause standard should apply to a non-suspect under the facts presented here.

REASONS FOR DENYING THE PETITION

I. Police Officers Have No Qualified Immunity To Seize A Person Who Has Departed The Residence Of A Suspect To A Crime, Transport Her To A Police Station, Read And Obtain A Waiver Of Her *Miranda* Rights, Interrogate Her, And Detain Her For Over Four Hours Without Probable Cause To Believe She Has Committed A Crime.

A. The Sixth Circuit's decision affirming the District Court's denial of qualified immunity to the officers squarely follows the Supreme Court's decision of *Dunaway v. New York,* 442 U.S. 200 (1979), and its progeny.

The Sixth Circuit's analysis squarely follows the Supreme Court's rulings applying the probable cause standard to a seizure of a person which constitutes a de facto arrest. The Petitioners mischaracterize the Supreme Court's rulings which distinguish between applying a "reasonableness" standard for temporary detentions, and the probable cause standard which is required whenever a seizure is equivalent to a technical arrest. The Supreme Court and lower courts have clearly established that probable cause is required when a seizure of a person amounts to a de facto arrest. The Sixth Circuit correctly applied the law to the case *sub judice,* and, there being no conflict with the Supreme Court's decisions, the Petition should be denied (*Cf.* Sup. Ct. R. 10.1(c)).

The Supreme Court has consistently adhered to the basic principal of Fourth Amendment jurisprudence that an officer must have probable cause in order to make an arrest. *Beck v. Ohio,* 379 U.S. 89 (1964). The "probable cause" necessary to effectuate an arrest is whether the officer, at the moment the arrest was made, was aware of

facts and circumstances consituting reasonably trustworthy information sufficient to warrant a prudent person in believing the arrestee had committted or was committing an offense. *Id.*, 379 U.S. at 91.

As applied to searches and seizures, this Court has distinguished between police stops, seizures, detentions and searches where something less than probable cause is required, and stops, detentions, searches and seizures requiring probable cause. While *Terry v. Ohio*, 392 U.S. 1 (1968) made it clear that temporary detentions (stop and frisk) on the street may be made on less than probable cause (*i.e.*, reasonable suspicion), the Court has consistently held that once a detention of a suspect exceeds the scope of a *Terry* (investigatory) stop, the police must have probable cause for the detention. *See, Dunaway v. New York*, 442 U.S. 200 (1979); *Florida v. Royer*, 460 U.S. 491 (1983).

In *Dunaway*, the *suspect*, without probable cause, was taken to the police station, put in an interrogation room and questioned, and would have been physically restrained if he tried to leave or refused to accompany the police officers to the station. The Supreme Court rejected the government's argument that these actions amount only to a *Terry* stop. "Indeed, any 'exception' [to the requirement of probable cause] that would cover a seizure as intrusive as that in this case would threaten to swallow the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause." *Id.* at 213.

The *Dunaway* Court also specifically decided not "[t]o adopt a multifactor balancing test of reasonable police conduct under the circumstances to cover all seizures that do not amount to technical arrest. . . . [since] [t]he requisite balancing has been performed in centuries of precedent and is embodied in the principal

that seizures are reasonable only when supported by probable cause." *Id.* at 213-14. Finally, the court stated that "detention for custodial interrogation—regardless of its label—intrudes so severely on interest protected by the Fourth Amendment as necessarily to trigger traditional safeguards against illegal arrest." *Id.* at 216. Thus, the Court has previously rejected application of the reasonableness test asserted by the Petitioners herein.

The Supreme Court reaffirmed this view in *Hayes v. Florida*, 470 U.S. 811 (1985), stating:

> Our view continues to be that the line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes. We adhere to the view that such seizures . . . are sufficiently, like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause.

Id. at 816. *See also, Florida v. Royer, supra* (an investigatory detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop).

Without question, Marilyn Centanni was subjected to a de facto arrest by the Mayfield Heights Police Officers when she was forced to accompany them to the police station, read her *Miranda* rights, interrogated, and detained for approximately four hours. Admittedly, the officers lacked probable cause to believe she committed, or took part in, any crime. The Sixth Circuit properly applied *Dunaway* and its progeny to the case *sub judice*, in determining that the officers needed probable cause before transporting Centanni to the police station, interrogating her, and detaining her.

An anomalous, if not outrageous, situation would exist if the principles enunciated in *Dunaway* do not apply to Centanni simply because she was a free citizen who was *not* a suspect to a crime. Custodial interrogation and detention of a non-suspect, based on the unfounded supposition that she would otherwise have the *opportunity* to notify a suspect of police surveillance, would permit officers to make warrantless seizures and detentions of persons for lengthy periods of time premised solely on their speculation that the detainee might commit some future obstructive act, without having any evidence to support this "psychic" conclusion.

Certainly, the officers must, at a minimum, establish probable cause to believe Centanni has committed a crime or has begun taking part in an obstructive act to warrant such a severe intrusion on her right to be let alone. *See, Beck v. Ohio, supra.* If not, George Orwell's "Big Brother" police state is certainly alive and well in 1994 Mayfield Heights, Ohio, where the police may detain free citizens based on the officers' speculation that the citizen's liberty provides an opportunity to commit a future criminal or obstructive act when the citizen has not manifested any intent or propensity to do so.

Petitioners obfuscate the crucial issue of whether the intrusion on Centanni's liberty was sufficient to constitute a de facto arrest such that the restraint could only be premised upon probable cause. Unequivocally, the transportation, four-hour detention, interrogation, reading and waiving her *Miranda* rights, and holding her incommunicado when she was not a suspect to any crime, constitutes a de facto arrest outside the ambit of the initial *Terry* stop. When the initial investigatory

Terry stop (which in this case included a stop, identification, and a search of her purse, her person, and her vehicle) concluded without the finding of any incriminating evidence, Centanni should have been released from custody.

As the Sixth Circuit noted, by transporting Centanni to the police station, providing *Miranda* warnings, questioning her extensively, and preventing her from leaving the station, the initial *Terry*-type stop was extended to a full arrest (Petition, pages A8-A9). Since the Petitioners lacked probable cause to believe Centanni was involved in any crime, the denial of qualified immunity was proper. This Court ought not to spend its valuable time scrutinizing the record when it has previously determined that the detention of a *suspect* to a crime, under less intrusive conditions, is impermissible without probable cause (*See Dunaway, Royer, supra*).

B. The Sixth Circuit Court of Appeals decision denying qualified immunity to the officers does not conflict with the decisions of other United States Appellate Courts.

The United States Appellate Courts have uniformly applied the principles enunciated in *Dunaway v. New York, supra*, and have mandated that whenever a *Terry* seizure/detention is tantamount to a de facto arrest, the arrest is unlawful unless it is based on probable cause that the individual arrested committed or is otherwise involved in a crime. *See e.g., United States v. Zapata*, 18 F.3d 971, 975 (1st Cir. 1994) (investigatory stops can be justified by reasonable suspicion, while de facto arrests are sufficiently coercive to require probable cause); *Soares v. Connecticut*, 8 F.3d 917, 920 (2d Cir. 1993) (right not to be arrested in the absence of probable

cause); *Cabellero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992) ("arrest by police officers without probable cause violates the Fourth Amendment's guarantee of security from unreasonable searches and seizures"); *Clay v. Conlee*, 815 F.2d 1164, 1168 (8th Cir. 1987) (the constitution prohibits arrests not based on probable cause);[3] *United States v. Recalde*, 761 F.2d 1448 (10th Cir. 1985) (officer's transportation of suspect to police station in hopes of developing probable cause was abuse of investigatory detention); *United States v. Willis*, 759 F.2d 1486 (11th Cir.), *cert. denied*, 474 U.S. 849 (1985); *United States v. Webster*, 750 F.2d 307 (5th Cir.), *cert. denied*, 471 U.S. 1106 (1984) (unlike brief investigatory seizures, custodial questioning on less than probable cause required for full-fledged arrest is illegal); *United States v. Poole*, 718 F.2d 671 (4th Cir. 1983) (once investigatory stop has been completed, any further detention must be based on consent or probable cause).[4]

The United States Appellate Courts are not in conflict over the application of the Supreme Court's rulings that detentions after investigatory stops which are equivalent to de facto arrests must be based on probable cause. Therefore, the Petition should be denied (See, Sup. Ct. R. 10.1(a)).

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[3] Citing, *Beck v. Ohio*, 379 U.S. 89 (1964).

[4] *Accord, United States v. Chamberlin*, 644 F.2d 1262, 1266 (9th Cir. 1980) *cert. denied*, 453 U.S. 914 (1981) (20-minute detention of suspect in patrol car after legitimate *Terry* stop is impermissible under *Dunaway* since the seizure was tantamount to arrest and officer lacked probable cause, despite officer's acting "reasonable"); *United States v. Tehrani*, 826 F. Supp. 789 (D. Vt. 1993) (seizure which constitutes an arrest must be based on probable cause); *Armster v. City of Riverside*, 611 F. Supp. 103, 108 (D.C. Cal. 1985) ("if a detention does go beyond an investigative detention to constitute a de facto arrest, it must be based on probable cause"), citing, *Florida v. Royer*, 460 U.S. 491, 498-99 (1983); and *Dunaway, supra*, 442 U.S. at 208-209.

CONCLUSION

For each of the foregoing reasons, this Court should deny the Petition for Certiorari, and thereby allow Marilyn Centanni, who was victimized by the officers on February 20, 1991, to have the fair trial on this matter to which she is entitled, as soon as possible.

Respectfully submitted,

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